

**THE JUDICIAL STATUTE OF FOREIGN CITIZENS
WHO UNFOLD ECONOMIC ACTIVITIES ON ROMANIA'S
TERRITORY ACCORDING TO THE STIPULATIONS
OF LAW NO 300 JUNE 28, 2004**

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Rezumat: În vederea aderării României la Uniunea Europeană prin închiderea negocierilor pentru capitolul "Comerţ", legiuitorul român a aliniat legislaţia comercială la cererile Uniunii. Legea nr 300 din 28 iunie 2004 privind autorizarea persoanelor fizice şi a asociaţiilor familiale care desfăşoară activităţi comerciale independente, permite cetăţenilor din statele membre ale Uniunii Europene, precum şi din statele care aparţin Spaţiului Economic European, desfăşurarea de activităţi comerciale pe teritoriul românesc, în conformitate cu prevederile din legislaţia română comercială. Astfel, România a respectat principiul de liberă circulaţie şi liberă şedere a oricărui cetăţean al Uniunii Europene pe teritoriul statelor sale membre.

Cuvinte-cheie: liberă circulaţie a cetăţenilor, cetăţenie europeană, restrângerea dreptului la liberă circulaţie, Uniune Europeană, dispoziţii comunitare

Abstract: In the view of Romania's accession to the European Union by closing the negotiations for the chapter "The Commerce", the Romanian legislator aligned the commercial legislation to the demands of the Union.

Law no 300 from June 28, 2004 regarding the authorization of natural persons and of family associations which unfold commercial activities independently, allows the citizens from the member states of the European Union, as well as from the states belonging to the European Economic Area, to unfold commercial activities on Romanian territory according to the stipulations of the Romanian commercial legislation. Thus, Romania complied with the principle of free circulation and free settlement of any European Union citizen on the territory of its member states.

Keywords: free circulation of people, European citizen, restraining rights to free circulation of people, European Union, Communitarian depositions

European Union's citizens enjoy the freedom to unfold a commercial activity according to the human rights and to the national legislation, and this is because any citizen of the Union, whether a male or a female, has the right to circulate and to settle down on the territory of the member states.¹

In the view of Romania's adhesion to the European Union and in order to harmonize the legislation with the community *acquis*, closing the negotiations for the chapter "The Commerce" meant the alignment of the commercial legislation to the Union's standards.

Law no 300 from June 28, 2004, regarding the authorization of natural persons and of family associations which unfold economic activities independently, settled the judicial regime of foreign citizens who carry on different activities on Romania's territory.

The citizens coming from the member states of the European Union and from the states belonging to the European Economic Area (Norway, Lichtenstein and Iceland) can unfold economic activities on Romania's territory either independently or organized in family associations.

The sphere of economic activities which can be carried on is extremely large, including all the domains, jobs and occupations, except for those settled in special laws. Annexe 1 of Methodological norms for applying Law no 300 from 2004, approved by the decision of the government no 1776 from 2004, establishes in detail 425 activities coded in CAEN code, activities which we consider to belong to the series of commerce activities contained within art. 3 of the Commercial Code, being thus under the jurisdiction of the commercial stipulations.

The following kinds of economic activities can be unfolded: production and circulation of the goods, execution of different works, providing services. It is to be noticed that the activities mentioned in the CAEN Code from 0111 to 0502 are agricultural activities: cultivating cereals, vegetables, fruits etc, raising animals and birds, forestry and pisciculture.

The citizens coming from a member state of the European Union or belonging to the European Economic Area who unfold economic activities independently can be in one of the following situations:

a) their place of residence is in Romania

In this case, the foreign citizens of the states mentioned above enjoy *the right of settlement*, according to which they may carry on economic activities or they may constitute themselves in family associations on Romania's territory under the same terms as Romanian citizens.

- they are already 18;

- their medical condition allows them to carry on the activity for which they

¹ Article II-16, Title II, *The Charter of the Fundamental Rights of the Union, Treatise of Setting-up a Constitution for Europe*, The European Institute in Romania, Coordination Office, translations, September 2003, p. 51.

ask license. They must hand in the translated and certified copy of the medical certificate obtained in their country.

- they have the certification – the professional qualification or, if possible, the professional experience-, required in order to unfold the economic activity for which they ask license.

The order of the Minister of Work, Social and Family Solidarity no 701 from December 17, 2003 appoints the institution that must recognize automatically the documents which certify any qualification obtained abroad by the citizens of the states mentioned above.²

- they have the license released according to the law;
- they figure in Registrul Comertului (the evidence of all merchants in a register of the State) and in all territorial fiscal organisms;
- they must figure in the pension system and in the system of health insurances.

The foreign citizens who come from the states mentioned above will obtain their license and the certificate of registration within Registrul Comertului from the City Hall where they have their residence.

The City Hall has the obligation to release the license within 10 working days from the day of the application. Any delay after the 10 days will be sanctioned with a fee of 500,000 ROL per each day of delay. Beginning to unfold any commercial activity before obtaining the license and the certificate of registration within Registrul Comertului represents a contravention of article 1a) of Law no 12 from 1990, republished, regarding the protection of the citizens against any illicit commercial activity.

The license which allows foreign citizens to carry on economic activities independently contain the following data: the institution which released it, the date when it was released, its registration number, information about the company, its headquarters, citizenship (place of residence), the main activity for which it was released (CAEN class, the name), the secondary activity (CAEN class), the place where the activities are to be carried on, other headquarters and pedlar activities, if it should be the case. Any modification of the data from the license make the object of changing, suspending or cancelling it.

Foreign citizens who unfold economic activities independently have the right to hold only one license.

- b) they don't have their residence in Romania, but in one of the member states of the European Union or belonging to the European Economic Area.

In this case, the citizens of those states can only carry on service activities on Romania's territory, that is they can unfold those economic activities established in Annexe 1 (through the decision of Romania's Government no 1766 from 2004) and respecting the following terms and conditions:

² *The Official Gazette of Romania*, part I no. 19 from January 9, 2004.

- they practise economic activities legally in one of the states mentioned above;

- they must show the document released by that state, valid at the moment the activity is carried on, and which certifies the right to perform that specific activity. A certified and translated copy of the document will be deposited with the City Hall under whose jurisdiction the person unfolds the activity for which he or she has the license, institution which is qualified to release the license.

In this case, the foreign citizen who has obtained the license in his native country does not obey the terms established in article 5 of the Law regarding the authorization of natural persons and family associations who carry on economic activities independently, law no 300 from June 28 iunie, 2004.

In order to carry on economic activities, the foreign citizens coming from the states mentioned above are allowed to constitute themselves in family associations on Romania's territory.³

The family association can be founded at the initiative of a foreign citizen coming from one of the states mentioned above and it is constituted within the context of *the right to settlement* from those members of the family who have their place of residence in Romania.

The family association is represented in its relationships with third parties by the foreign citizen who had the initiative to found it.

The foreign citizen who had the initiative to found a family association must fulfill the same terms and conditions mentioned above, that is the conditions for unfolding economic activities independently, with the clear request that the members of the family association must be at least 16.

The family association founded by a foreign citizen on Romania's territory must hold the license and the certificate of registration with Registrul Comertului, released in similar conditions, just like the foreign citizen who carries on economic activities independently.

The foreign citizen coming from one of the states mentioned above who unfolds economic activities independently or founded a family association may also carry on pedlar activities such as direct sales, sales outside commercial spaces and pedlar commerce according to the valid legal norms. For this purpose, he or she will fill in a form to require the license, in which he must also state the nature of this activity and the means of carrying it on.

The license that will be released is valid in those localities where its owner will unfold pedlar activities.

The person who holds a license for this kind of activities enjoys an important facility: he will be allowed to require the right to use public domain from the City Hall under whose jurisdiction he or she unfolds the specific activity.⁴

³ Article 1(paragraph.1) *The Law regarding the authorization of natural persons and family associations who unfold economic activities independently* no 300 from June 28, 2004, *The Official Gazette of Romania* no 576 from June 29, 2004, All Beck Publishing House, Bucharest 2005, page. 1

⁴ Article 10 paragraph 4 from *Methodological norms for applying Law no 300 from 2004, regarding*

The judicial statute of the foreign citizens who unfold economic activities on Romania's territory is protected and guaranteed by the legal stipulations regarding the registration of the merchant and the unfolding of commercial activities within the limits of loyal commerce.

Bibliography:

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- 3 Article. 1 (paragraph1) *The Law regarding the authorization of natural persons and family associations who unfold economic activities independently* no 300 from June 28, 2004, *The Official Gazette of Romania* no 576 from June 29, 2004, All Beck Publishing House, Bucharest 2005.
- 4 Article 10 paragraph 4 from *Methodological norms for applying Law no 300 from 2004 regarding the authorization of natural persons and family associations who unfold economic activities independently*, approved by the decision of the government no 1766 from October 21, *The Official Gazette of Romania*, 1048 from November 12, 2004, All Beck Publishing House, Bucharest 2005.

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